IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78-338

LARRY JOE DOOLEY,
Petitioner,
v.
STATE OF GEORGIA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE GEORGIA COURT OF APPEALS

BRIEF FOR THE RESPONDENT IN OPPOSITION

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STATUTE CITED

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The State of Georgia, by and through the Attorney General of the State of Georgia, respectfully requests this Court to refuse to grant a writ of certiorari to the Georgia Court of Appeals on the basis that review of the state court decision would present no substantial question not previously decided by this Court and the state court decision is in accord with the applicable decisions of this court.

QUESTION PRESENTED

Whether the Court of Appeals made a correct determination that evidence obtained by law enforcement officers justifiably on the premises was admissible under the plain view doctrine.

STATEMENT OF THE CASE

Petitioner seeks to have this Court review the decision of the Georgia Court of Appeals in Dooley v. State, 145 Ga. App. 539, 244 S.E.2d 55 (1978), upholding Petitioner's conviction for possession of a motor vehicle with altered identification in violation of Ga. Code Ann. § 68-9916(a)(c). On March 14, 1978 the Court of Appeals of Georgia held that there was no error in the denial of the Motion to Suppress and affirmed the judgment. Dooley v. State, 145 Ga. App. 539. The Georgia Supreme Court denied Petitioner's application for a writ of certiorari to review the appellate court's decision on May 24, 1978.

On August 4, 1976, Petitioner was indicted and charged with possession of a motor vehicle with altered identification in violation of Ga. Code Ann. § 68-9916. On August 13, 1976, Petitioner filed a Motion to Suppress Evidence obtained from his premises on April 4, 1976.

At the hearing on the Motion to Suppress, Gary McConnell, the Sheriff of Chattooga County, testified that on April 9, 1976 he received information concerning a stolen Cadillac automobile which was located at a particular clean-up shop. Sheriff McConnell went to the clean-up shop which was leased by the Petitioner and found the stolen vehicle. The Sheriff further testified that he was told that the vehicle had been left there by the Petitioner, Larry Joe Dooley. (T. 3). 1/

Sheriff McConnell further testified that between 11:00 A.M. and 12:00 Noon that same day he proceeded with FBI Agent Burns to a used car lot owned by Petitioner in order to investigate the stolen Cadillac. (T. 5). He further stated that at this time he had no information about any other particular stolen vehicle. (T. 19). Sheriff McConnell drove on to the business premises during what appeared to be regular business hours and observed in plain view a 1975 cream or beige Chevrolet motor vehicle. He further testified that he saw that the dash had been partially removed from the Chevrolet and he also saw several screwdrivers inside the car. The Sheriff also stated that he could see that the serial plate had been removed. (T. 7). Based on this information Sheriff McConnell

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1/ References are to the transcript of the hearing on the Motion to Suppress.

investigated and found that this was a stolen vehicle. Subsequently the Sheriff seized the Chevrolet and several other motor vehicles on the premises.

Based on the Sheriff's testimony, Petitioner's Motion to Suppress was overruled and the case proceeded to trial. On August 20, 1976 Petitioner was convicted of possession of a motor vehicle with altered identification. The Court of Appeals of Georgia subsequently upheld the conviction and found that there had been no error in overruling the Motion to Suppress because the evidence was observed in plain view. Dooley v. State, supra, 145 Ga. App. at 541.

REASON FOR NOT GRANTING THE WRIT

A. THERE WAS NO ERROR IN OVERRULING THE MOTION TO SUPPRESS EVIDENCE DISCOVERED IN PLAIN VIEW BY LAW ENFORCEMENT OFFICERS JUSTIFIABLY ON PETITIONER'S BUSINESS PREMISES.

Respondent, the State of Georgia, submits that there was no violation of Petitioner's Fourth or Fourteenth Amendment rights by the Court of Appeals of Georgia in holding that evidence obtained through a plain view discovery was admissible. The evidence in the case at bar was discovered in full accordance with the plain view doctrine recognized by this Court in Coolidge v. New Hampshire, 403 U.S. 443 (1971) which has been followed by many circuits, e.g., U.S. v. Mason, 523 F.2d 1122 (D.C. Cir. 1975), U.S. v. Green, 474 F.2d 1385 (5th Cir. 1973), U.S. v. Truitt, 521 F.2d 1174 (6th Cir. 1975), U.S. v. Cooks, 493 F.2d 668 (7th Cir. 1974), U.S. v. Johnson, 541 F.2d 1311 (8th Cir. 1976), U.S. v. Sedillo, 496 F.2d 151 (9th Cir. 1974). Thus, there is no substantial federal question presented for review and this Court should deny the petition for certiorari.

Petitioner has suggested that the plain view doctrine is inapplicable,

relying on the decision in Coolidge. The State contends that, even though there was no warrant, the seizure was valid as the plain view doctrine is applicable and all requirements are met.

The first requirement set out by this Court in Coolidge was that there must have been a prior valid intrusion. 403 U.S. at 466. The main evidence in the case at bar consisted of a 1975 cream or beige Chevrolet automobile. By its very nature, the exterior and much of the interior of a motor vehicle is subject to the view of any casual on-looker when, as in the case at bar, the automobile is on a used car lot open for business. United States v. Polk, 433 F.2d 644 (5th Cir. 1970). Therefore, individuals have a lesser expectation of privacy as to such a vehicle. Furthermore, since the function of a motor vehicle is largely transportation, there is little abiliy to avoid public view. Caldwell v. Lewis, 417 U.S. 583, 590 (1974). Thus, there could have been no justifiable expectation of privacy when the motor vehicle was situated out in the open at Petitioner's used car lot.

In addition to the use of the premises for business purposes and the fact that the used car lot was apparently open for business, the law enforcement officers had additional justification for their presence. Sheriff McConnell testified at the hearing on the

Motion to Suppress that he had received information earlier as to a stolen vehicle which he found at a clean-up shop leased by the Petitioner. (T. 3). The Sheriff further testified that he was told Petitioner brought the stolen vehicle to the clean-up shop. Sheriff McConnell then stated that he went with FBI Agent Burns to the Petitioner's used car lot to investigate that particular stolen vehicle and that he had reason to believe that Petitioner was involved. (T. 19). Even though the Sheriff thought the Petitioner might have other stolen vehicles, he had no knowledge of any other particular vehicle that might be at the lot. His purpose in going to the lot was to investigate the stolen Cadillac that had been found at the Petitioner's clean-up shop. (T. 22).

The intrusion into the car was justified by the following facts: (1) the vehicle was in plain view and (2) the missing serial plate was readily apparent. The facts were sufficient to indicate the car could have been stolen and justified a further check. Thus, the first requirement of a valid prior intrusion was met.

The second requirement of the Coolidge decision is that the discovery be inadvertent. 403 U.S. at 469. In Coolidge, the officers knew of the exact description and location of the vehicle and had even obtained a

warrant for the seizure of the vehicle. Under these facts the Court held that the discovery was not inadvertent. Coolidge v. New Hampshire, supra, 403 U.S. at 472. However, in the case at bar, Sheriff McConnell did not know that there would be any particular vehicle or even stolen vehicles at all at Petitioner's place of business. Furthermore, the Sheriff's purpose in going to the lot was not to search for other vehicles but to investigate a different stolen vehicle, as opposed to Coolidge, where the officer's purpose was to arrest Mr. Coolidge and to seize the particular vehicle.

The discovery of the automobile in the case at bar was not anticipated. Nor is there any evidence that this was a planned search. There was no reason for the officers to believe that there would be a stolen vehicle in plain view at the Petitioner's business premises. Therefore, the discovery of the evidence was completely inadvertent and the second requirement of Coolidge was met.

The third requirement of Coolidge is that it must be immediately apparent to the officers that the items discovered constituted evidence of a crime. Petitioner did not even suggest that this requirement was not met. Thus, all requirements for a plain view discovery were met by the law enforcement officers in the case at bar.

The State has shown that the holding of the Court of Appeals of Georgia is consistent with the prevailing authority established by this Court. Therefore, there is no question of a violation of Petitioner's constitutional rights.

CONCLUSION

Respondent respectfully requests this Court to refuse to grant a writ of certiorari to the Court of Appeals of Georgia as it is apparent that there was no violation of Petitioner's constitutional rights since there was a valid plain view discovery.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, G. Stephen Parker, Attorney of Record for the Respondent, and a member of the Bar of the Supreme Court of the United States, hereby certify that in accordance with the rules of the Supreme Court of the United States, I have this day served a true and correct copy of this Brief for Respondent in Opposition upon the Petitioner by depositing a copy of same in the United States mail, with proper address and adequate postage to:

William Ralph Hill, Jr.
Attorney at Law
P. O. Box 1350
LaFayette, Georgia 30728

This 22nd day of September, 1978.

G. Stephen Parker

G. STEPHEN PARKER